

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and
NCR CORPORATION,

Plaintiffs,

v.

No. 2:08-cv-00016-WCG

GEORGE A. WHITING PAPER COMPANY,
P.H. GLATFELTER COMPANY, MENASHA
CORPORATION, GREEN BAY PACKAGING
INC., INTERNATIONAL PAPER COMPANY,
LEICHT TRANSFER & STORAGE COMPANY,
NEENAH FOUNDRY COMPANY, NEWPAGE
WISCONSIN SYSTEM INC., THE PROCTER
& GAMBLE PAPER PRODUCTS, and
WISCONSIN PUBLIC SERVICE CORP.
CITY OF APPLETON,
CITY OF DE PERE,
CITY OF GREEN BAY,
CITY OF KAUKAUNA,
BROWN COUNTY,
GREEN BAY METROPOLITAN
SEWERAGE DISTRICT,
HEART OF THE VALLEY METROPOLITAN
SEWERAGE DISTRICT,
NEENAH-MENASHA SEWERAGE
COMMISSION,
VILLAGE OF KIMBERLY,
VILLAGE OF WRIGHTSTOWN,
WTM I COMPANY, and
U.S. PAPER MILLS CORPORATION,

Defendants.

**DEFENDANT P.H. GLATFELTER COMPANY’S MOTION TO DISMISS IN PART
PLAINTIFFS’ FIFTH AMENDED COMPLAINT**

Defendant P.H. Glatfelter Company (“Glatfelter”), by its undersigned counsel,
respectfully moves this Court to dismiss in part Plaintiffs Appleton Papers Inc.’s and NCR
Corporation’s Fifth Amended Complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal

Rules of Civil Procedure. Glatfelter seeks the same relief that it sought in its Motion to Dismiss in Part Plaintiffs' Second Amended Complaint (Dkt. No. 58) -- that is, to dismiss: (i) all portions of Counts I and II of the Fifth Amended Complaint seeking to recover from Glatfelter "OU1 Response Activities and Costs," as defined in the consent decree entered in *United States v. P.H. Glatfelter Co.*, No. 2:03-cv-949-LA; (ii) all portions of Count I of the Fifth Amended Complaint seeking to recover natural resource damages; and (iii) Count III of the Fifth Amended Complaint in its entirety -- for the same reasons set forth in that motion and the accompanying Memorandum in Support (Dkt. No. 58). Therefore, Glatfelter incorporates herein by reference its Motion to Dismiss in Part Plaintiffs' Second Amended Complaint, its Memorandum in Support of that motion, and its proposed Order (Dkt. No. 58).

On April 11, 2008, plaintiffs filed a Third Amended Complaint (Dkt. No. 80) which added seven additional defendants but did not alter the allegations against Glatfelter. Consequently, Glatfelter filed in response a motion to dismiss the Third Amended Complaint (Dkt. No. 101), which incorporated by reference Glatfelter's prior motion to dismiss and supporting memorandum and proposed order (Dkt. No. 58). Plaintiffs' filing of the Third Amended Complaint did not affect the arguments made in Glatfelter's Motion to Dismiss in Part Plaintiffs' Second Amended Complaint or the Court's resolution of the motion to dismiss.

On June 11, 2008, plaintiffs filed a Fourth Amended Complaint (Dkt. No. 148) adding 10 additional defendants (for a total of 20 defendants). One day later, on June 12, plaintiffs filed a Fifth Amended Complaint (Dkt. No. 149) adding yet two more defendants. The Fifth Amended Complaint modifies a few of the allegations from the Third Amended Complaint

but does not alter materially the allegations directed against Glatfelter.¹ Plaintiffs already have responded to Glatfelter's prior motion to dismiss (Dkt. No. 92), Glatfelter has already filed a reply brief in support of its prior motion to dismiss (Dkt. No. 120), and the United States has filed a brief as *amicus curiae* (Dkt. Nos. 131, 145). Accordingly, Glatfelter does not anticipate that this present motion will affect the Court's disposition of the motion to dismiss.

Dated: June 19, 2008

Respectfully submitted,

s/ Sabrina Mizrachi
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¹ For example, *compare* Third Amended Complaint ¶ 37 ("As of the filing of this Third Amended Complaint, API has paid in excess of \$1.7 million and NCR has paid approximately \$1.4 million . . .") *with* Fifth Amended Complaint ¶ 61 ("As of March 31, 2008, API had paid in excess of \$1.7 million and NCR had paid approximately \$1.4 million . . ."); Third Amended Complaint ¶ 39 ("Very little if any of the work required under the 2007 Amended ROD has been performed to date, and accordingly few of the costs of the 2007 Amended ROD have been incurred yet.") *with* Fifth Amended Complaint ¶ 63 (omitting the allegation).

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of June 2008, a true and correct copy of the foregoing Defendant P.H. Glatfelter Company's Motion to Dismiss in Part Plaintiffs' Fifth Amended Complaint was filed electronically via the Electronic Court Filing system and is available for viewing and downloading by the following:

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In addition, a copy will be sent by U.S. Mail to the following:

James A. Gunz Gunz Law Office 1142 Glenayre Dr. Neenah, WI 54956-4236	City of Appleton 100 North Appleton St. Appleton, WI 54911
City of Green Bay 100 North Jefferson St. Green Bay, WI 54301-5026	City of Kaukauna 201 West 2 nd St. Kaukauna, WI 54130-2442
Brown County P.O. Box 23600 Green Bay, WI 54305-3600	Green Bay Metropolitan Sewerage District P.O. Box 19015 2231 North Quincy St. Green Bay, WI 54307-9015
Village of Kimberly Kimberly Municipal Complex 515 West Kimberly Ave. Kimberly, WI 54136	Village of Wrightstown P.O. Box 227 Wrightstown, WI 54180
WTM I Company c/o SCA Tissue North America P.O. Box 2400 Neenah, WI 54957-2400	U.S. Paper Mills Corporation c/o Sonoco Products Company One North 2 nd St. Hartsville, SC 29550

s/ Sabrina Mizrachi

Sabrina Mizrachi